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December 22, 2008

Corbin Davis

Clerk of the Court

Michigan Supreme Court

P.O. Box 30052

Lansing, MI 48909

RE: ADM File No. 2007-40

Proposed Amendment of Rule 7.205 of the Michigan Court Rules

Dear Clerk Davis:

At its December 16, 2008 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendment published for comment. After considering comments from the Civil Procedure and Courts Committee and the Appellate Practice Section, the Executive Committee unanimously voted to support changes to MCR 7.205, supporting Alternative A over Alternative B, but preferring yet a third alternative that we offer for consideration.

The committee agreed that it would be useful to clarify the situation when a claim of appeal is dismissed. If the Court of Appeals does not dismiss the appeal for a significant time, the party could lose the opportunity to file a delayed application for leave to appeal.

To achieve this objective, the State Bar offers a third alternative in amending MCR 7.205 to allow a timely application for leave to appeal following such a dismissal. The principle underlying Alternative A is that the party who suffers such a dismissal was not at fault and should not be punished for failing to anticipate an unexpected ruling on jurisdiction by the Court of Appeals. Sometimes it is truly unclear whether an appeal of right was available. For that reason, there is no reason to treat the application as late in that situation. Therefore, MCR 7.205 (A) could be amended to read as follows:

Rule 7.205 Application for Leave to Appeal

(A) Time Requirements: An application for leave to appeal must be filed within

- (1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; ~~or~~
- (2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period; or -

(3) 21 days after dismissal of a claim of appeal from the order appealed from.

For purposes of sub-rules (A)(1) and (A)(2), "entry" means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal's register of actions.

Additionally, our suggested alternative would avoid a possible undesirable effect of the alternatives published for comment. It is not uncommon for an appeal of right to be taken on one part of a case following the denial of a governmental immunity defense. In such a case, the published proposal would toll the time for late appeals of all orders in the case until the conclusion of the appeal of right on the governmental immunity question. This could lead to significant unnecessary delay, and is presumably not intended.

We appreciate the opportunity to offer this position for the Court's consideration. Please contact me with any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Welch".

Janet Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Edward Pappas, President